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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,240	04/01/2004	Michael Spolidoro	MED-0016	3052

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EXAMINER
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PICKETT, JOHN G

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 07/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/817,240

Applicant(s)

SPOLIDORO, MICHAEL

Examiner

Gregory Pickett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>4/26/04</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Priority*

1. This application lists Michael Spolidoro as the sole inventor and claims benefit to US Provisional Application 60/460,283. US Provisional Application 60/460,283 lists Jon-Paul Rogers as the sole inventor. To be entitled to priority, resolution of this discrepancy must be provided.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Yates, Jr. et al (US 5,156,267; hereinafter Yates).

Claim 1: Yates discloses a reclosable tray **5** with a lower portion **10** having a first major lower side **21** having a lower hinge portion **139**; a second major lower side **14** having first lower locking portions **30 & 35**; a first minor lower side **12** connecting sides **21 & 14**; an upper portion **15** with a first major upper side **142** having an upper hinge portion **144**; a second major upper side **154** having first upper locking portions **155 & 160**; and a first minor upper side **152** connecting sides **142 & 152**. The locking portions of Yates are considered tabs and function as claimed (see Col. 2, lines 21-26).

Claim 2: Yates discloses compartments **50, 100, 125, and 27**.

Claim 3: Yates discloses indentations **170 & 162** with indentation **170** cooperating with compartments **50, 100, and 125** to retain an article.

Claim 4: Yates discloses PVC (Col. 5, lines 28-30).

Claim 5: Yates discloses interior sidewall **45** and exterior sidewall **165** functioning as claimed.

Claim 9: Since upper locking portions **155 & 160** are inserted into lower locking portions **30 & 35**, the tips of upper locking portions **55 & 160** are disposed below the base opening of lower locking portions **30 & 35**.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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3. Claims 1-6 and 9, 10, <sup>//,</sup><sub>Λ</sub> 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marconi (US 5,954,203) in view of Roberts (US 4,681,223).

Claims 1 and 10: The examiner notes that claim 10 invokes 112, 6<sup>th</sup> paragraph by use of the “means for releasably locking” terminology. Marconi discloses a reclosable tray **10** with a lower portion **12** having a first major lower side **18** having a lower hinge portion **16**; a second major lower side (portion with tab **73**); a first minor lower side **47** connecting the sides; an upper portion **14** with a first major upper side **20** having an upper hinge portion **16**; a second major upper side (portion with tab **71**); and a first minor upper side **25** connecting the sides. Marconi is capable of retaining medical instruments and merely lacks the “means for releasably interlocking” being tabs on the second upper and lower major sides.

Roberts discloses a “means for releasably interlocking” being tabs **16 & 18** used to augment the functional engagement of the package (Col. 3, lines 44-46), with the upper tab below the lower tab (see Figure 5). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the package of Marconi with interlocking tabs as taught by Roberts in order to augment the functional engagement of the package.

Claims 2 and 14: Marconi discloses a plurality of compartments (spaces in between bubbles **57**).

Claims 3 and 15: Marconi discloses a plurality of indentations **59**.

Claims 4 and 13: Marconi uses PETG 6763 plastic but states that comparable alternative materials are considered to be within the scope of the invention. Roberts

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shows that PVC (Col. 3, lines 57-63) is a comparable alternative material and its use would have been an obvious matter of design choice.

Claims 5 and 12: Marconi discloses interior sidewall **45** on lower portion **12** and exterior sidewall **23** on upper portion **14** that function as claimed.

Claim 6: Marconi discloses second lower locking tab **49** and second upper locking tab **27**.

Claim 11: Marconi discloses the claimed invention except that Marconi uses insertion/receiving tabs on the side portions instead of overlapping flexible tabs. Roberts shows that overlapping flexible tabs were an equivalent structure known in the art. Therefore, because these two locking means were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the overlapping tabs of Roberts for the insertion/receiving tabs of Marconi.

4. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marconi-Roberts as applied to claim 1 above, and further in view of Vigue et al (US 5,036,980).

Marconi-Roberts discloses generally parallel exterior portions of the tabs (Roberts Figure 2).

Marconi-Roberts does not disclose expressly obliquely angled interior portions.

Vigue et al shows that obliquely angled interior portions were functional and desirable in the art at the time the invention was made (see Figure 8).

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At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to provide obliquely angled interior portions on the tabs of Marconi-Roberts because applicant has not disclosed that interior shape of the tabs provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected applicant's invention to perform equally well with either the rounded interior portions of Roberts or the obliquely angled interior portions of Vigue et al because both function to flex and overlap in order to effect a latching means.

Therefore, it would have been an obvious matter of design choice to modify Marconi-Roberts with obliquely angled interior portions to obtain the invention as specified in claims 7 and 8.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 11:30 AM - 8:00 PM.

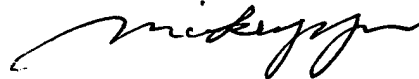
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Greg Pickett  
Examiner  
20 July 2005



Mickey Yu  
Supervisory Patent Examiner  
Group 3700